

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3053 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BAYAD TAL ANUSUCHIT JAN-JATI ANE ANYA SAMUDAYAK MANDLI LTD

Versus

STATE OF GUJARAT

Appearance:

MR MK VAKHARIA for Petitioners

MR MUKESH A PATEL for Respondents No. 1, 2

MR AV TRIVEDI for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/10/1999

ORAL JUDGEMENT

1. The petitioner No.1, Bayad Taluka Anusuchit Janajati Ane Anya Samudayak Sahakari Kheti Mandli Ltd. is a cooperative society registered under the provisions of the Gujarat Cooperative Societies Act, 1961. The second petitioner is the Chairman of the petitioner No.1 -Society. This society was registered by certificate dated 26th February, 1986 issued by the Assistant

District Registrar of Cooperative Societies, Sabarkantha District Panchayat. Along with the registration of the Society, its bye-laws were also registered by the Assistant District Registrar of the Cooperative Societies subject to certain modifications. The bye-laws inter-alia provide as its object to undertake cooperative farming and the first petitioner- Society is a cooperative farming society. The petitioner submits that majority members of the society belong to scheduled tribes and all of them are agricultural landless labourers. Total number of members of the petitioner -Society is 15 out of which 11 members belong to scheduled tribes and remaining 4 members belong to higher caste but they are farmers having small holdings. The area of operation of the petitioner-society, as per the case of the petitioners, is confined to village Demai, Desaipura. In the revenue limits of village Demai, there is a compact block of land admeasuring 104 acres and 22 gunthas which has been vested in the State Government under the provisions of section 21 of the Gujarat Agricultural Lands Ceiling Act, 1960. The Mamlatdar and A.L.T., Modasa, invited applications for allotment of the above referred land and the applications were to be submitted on or before 17th February, 1976. The petitioner-Society in response to that advertisement applied for allotment of the entire land admeasuring 104 acres and 22 gunthas. The Deputy Collector, Modasa under its order dated 28th May, 1986 decided to allot the land admeasuring 35 acres and 9 gunthas from compact block of land to the petitioner -Society subject to certain conditions and remaining land was granted to the respondent No.3- society. It is not in dispute that the respondent No.3 - society is also a registered cooperative society and all the members of it belong to scheduled tribes and it is also a farming society of agricultural landless labourers. One of the conditions of allotment of the said land to the petitioner -society was that it has to remove four members belonging to Patel community within 15 days as per the State Government circular of Revenue department dated 30th April, 1986 and second condition was to produce registration certificate legally recognised. The petitioners challenge the order of Deputy Collector, Modasa to the extent it relates to the grant of 69 acres and 13 gunthas of the land of this block in favour of respondent No.3 society and the condition to remove the members belonging to Patel community from the membership of the Society.

2. This petition came up for admission before this court on 18th June, 1986, on which date, notice was issued and interim relief in terms of para-15 (D) and (E)

has been granted. Thereafter on 23rd July, 1986, this matter has been admitted and after hearing the counsel for the parties, this court by way of interim arrangement directed that the competent authority would hand over the possession of the respective lands allotted to the parties by the impugned order. However, it is made clear that this arrangement would not create any right in the parties and is subject to final direction which may be issued. It has further been ordered that till the matter is decided, the competent authority would not insist for the condition that the petitioner- society should remove persons belonging to Patel community from the membership of the society.

3. This petition has been contested by the respondents No.1 and 2. They filed detailed affidavit in reply. The respondent No.3 has also filed affidavit in reply. However, to the affidavit in reply of the respondent No.3, the petitioner has not filed any rejoinder. The petitioner filed rejoinder to the affidavit in reply of respondents No.1 and 2.

4. The respondent No.3 stated in the reply that the District Registrar of Cooperative Societies, Himmatnagar under its order dated 26th July, 1989 cancelled the registration of the petitioner- society in exercise of his powers under section 20 of the Gujarat Cooperative Societies Act, 1961. The validity of this order has been challenged by the petitioner in special civil application No.6032 of 1989 and the same has been dismissed. As the registration itself of the petitioner -society has been cancelled, it is contended that the petitioner has no locus-standi to file this petition. It has next been stated in the reply that the land has been allotted to these two societies on proportionate basis of their members. Lastly it is stated that by inducting four Patel members, in fact, the petitioner - society is only a society so named but those adivasi community persons still continue to be only labourers in the land of the original owners from whom this land has been taken being excess of ceiling limit.

5. Learned counsel for the petitioner contended that as the petitioner has applied for whole of the block of the land, it should have been allotted to it. It has next been submitted that another society has a right to apply for the land but looking to the number of the members of the petitioner- society, this whole of the land has to be allotted to it and the respondent No.3 could have been allotted the land elsewhere. It has next been contended that the condition imposed of removal of

four members of the Patel community is wholly arbitrary and unjustified. The Government resolution, reference of which has been made, is not applicable to the facts of the present case, otherwise also, it has a prospective effect. Lastly, it is contended that the petitioner-Society has all the right to induct as its members, landless persons of other communities.

6. Shri Mukesh Patel, A.G.P., contended that by induction of four members of Patel community, in fact, total control of the Society remained in the hands of those persons. If the land vests in the State Government as excess land under the provisions of Gujarat Agricultural Lands Ceiling Act, for the allotment of the same to the landless labourers and to have control over these excess lands, this device is found out. In fact, this society is nothing but only a creation of these four persons and if these four persons are continued to be its members, the very purpose and object of enacting of this beneficial Act will be frustrated and what they can not do directly they will do indirectly. The land will remain in the hands of these persons and this oppressed class will continue to be an oppressed class i.e. these landless labourers will remain to be landless labourers. The beneficiaries of the Act will not get the benefit and these four persons will grab the land by forming a society with ten persons of adivasi community. Next it is contended that the allotting authority has acted very fairly and reasonably in allotment of the land. When these two societies are there in the village then looking to the number of members of the society in proportionate thereof the land has to be allotted. This land is of the same village where the members of the societies are residing and as such they have to be adjusted in this land accordingly what it has been done. Lastly, it is contended that the condition put by the allotting authority in the order of allotment of land to the petitioner is perfectly legal and justified.

7. The counsel for the respondent No.3 has supported the order of the allotting authority. He further submits that this petition now does not survive in view of the fact that the registration of the petitioner society has been cancelled by the competent authority. Lastly, it is contended that it is an equitable and fair distribution of the surplus land to the landless labourers, to which no exception can be taken.

8. The purpose and object of the Act- Gujarat Agricultural Lands Ceiling Act is to put ceiling on the holdings of the agricultural lands so that the surplus

land may be available with the State Government for allotment of the same to the landless labourers. This Act has a socio-economic object and purpose as well as it is to improve financial condition of this oppressed class. The land in question is admittedly a land which came to the Government as a surplus land. This land has to be allotted to the landless labourers of the area and adivasi community persons have first and preferential claim of allotment but the petitioner -society, I am constrained to observe, seems to be only a creation of Patel community persons whose lands have been declared to be surplus. By induction of these four persons in the society certainly it will remain to be under the control of these four persons. These persons will control the society and status of other members of the petitioner -society will remain to be only of a labourer. This class of persons will still continue to be oppressed class and though under the Land Ceiling Act this Patel community persons could not have retained the land in excess of ceiling limit, will get the land indirectly under this system of creation of society and get allotment of the excess land in the name of the society which virtually and substantially will remain under their total control and management.

9. Leaving apart, whether this circular is applicable or not applicable, prospective or retrospective, one fact remains to be clear in case this adivasi community persons are to remain with these Patels certainly the later persons will oppress and will dominate in the society and take substantial share of these persons. The status of oppressed class will remain to be only of labourers and their economic and social condition will not improve. I find sufficient justification and merits in the contention of the learned A.G.P. that this induction of four Patels is nothing but in substance grabbing of the land indirectly which was not permissible directly. This society is in fact a creation of the Patels themselves for their own benefits though to give it a shape of society of adivasis, 11 other persons have been inducted. This is in fact an attempt to frustrate the very object and purpose of the beneficial piece of legislation, which this court will not permit. The subject to the condition to which this allotment of land has been made to the petitioner is reasonable and in consonance with the socio-economic purpose and object of the Act aforesaid and to fulfil that object, the land has to go in the hands of the beneficiaries of the Act, the allotting authority was perfectly legal and justified in its approach to put this condition. In case these four persons are not removed

then certainly it will be a society of the Patel community persons and not of adivasi community persons. Otherwise also, I fail to see how the society should have objected against this condition if in fact it is not a society controlled and managed by the Patels. 11 members of the society are adivasis and if condition has been imposed, the substantial members of the society are to be benefitted and the society in majority should have welcome this decision. However, the challenge by the Society to this condition imposed goes to show that it is in fact and substance a society of Patels. Patels themselves should have withdrawn from the membership of the society after this condition if they are really a bonafide persons or if they are acting bonafide. The insistence of the society for deletion of this condition goes to show that it is totally controlled and managed by these four Patels and other eleven members are only dummy members. The grievance of the petitioner against the imposition of the condition to remove four Patel members from the membership of the society is wholly devoid of any substance and the same can not be accepted.

10. Second contention raised that whole of the land should have been allotted to the petitioner- society is also equally devoid of any substance and merits. When two societies of landless labourers in the village apply for the allotment of land then the allotting authority is correct in its approach to allot the land in proportionate of the members of the societies. It is in fact a fair and equitable distribution of the surplus land amongst the landless labourers - adivasis. It is a case where more number of landless persons will get the land. The petitioner- society in case it would have been really a society of adivasi landless labourers then it could not have objected this decision. The objection against this order of allotment of land to respondent NO.3- society gives out two inferences that the petitioner society is not in fact a bonafide society of landless labourers adivasis and secondly, it is dominated by Patels who are interested to garb whole of the land. Where if a surplus land is available in the village and two societies apply for allotment of the same to them, the allotting authority concerned has to consider the matter in furtherance of the object of the Act and land has to be fairly and equitably distributed amongst the landless persons of this category, which precisely has been done in the present case. In case the petitioners' contention is accepted then those landless persons of the adivasi community in the village will be deprived of the land and the petitioner- society will get unjust enrichment. It is not the object and purpose of the Act

to permit the holdings of the lands by the persons other than belonging to the landless adivasis. Fair distribution of surplus land is the only purpose and object of this Act and in this case by allotting the land in proportion to the members of the two societies, the allotting authority has acted in consonance with the object and purpose of the Act to which decision no exception can be taken.

11. So far as the preliminary objection of the counsel for the respondents is concerned, it is suffice to say that after the cancellation of registration of the petitioner- society and the dismissal of the writ petition challenging that order, the cooperative society has lost its locus-standi in the matter, in fact, the allotment of this land has to be cancelled. This allotment was made to the petitioner- society what it is seen to be, a cooperative society and naturally the consequence thereof is cancellation of the order of allotment. However, the learned counsel for the petitioner submits that the petition is dismissed only for non-prosecution and there is all hope that it may be restored by the court on application of the petitionersociety. These are only hypothetical questions and it is not the case of the petitioner that the restoration application has been filed and the same has been granted.

12. In view of this fact, it is open to the allotting authority to cancel the allotment of the petitioner -society and take back the possession of the land forthwith.

13. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. The petitioner is directed to pay Rs.3000/- as costs of this petition to the respondent NO.3 and Rs.500/- as costs of this petition to the State of Gujarat.

zgs/-